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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/051,565 06/08/98 SELDESLACHTS

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EXAMINER

BACHMAN & LAPOINTE  
900 CHAPEL STREET  
SUITE 1201  
NEW HAVEN CT 06510-2802

SHERRER, C

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

*9*

06/19/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.  
09/051,565

Applicant(s)

Seldeslachts

Examiner

Curtis E. Sherrer

Group Art Unit

1761



Responsive to communication(s) filed on Apr 6, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

Claim(s) 28, 32, 33, and 35-62 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 28, 32, 33, and 35-62 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**Part III DETAILED ACTION**

*Drawings*

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 04/06/00 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of to show where the distribution balls are located in the disclosed apparatus.

*Specification*

2. The amendment filed 04/06/00 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Applicant has amended the drawings and written disclosure to show where the distribution balls are located in the disclosed apparatus without providing any basis for such amending.

Applicant is required to cancel the new matter in the reply to this Office action.

*Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 28, 32, 33, and 35-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The scope of the phrases “substantially prevent foaming,” or “significant formation of foam” and “substantially perpendicular” (Claims 28, 51 and 57), and “substantially all of the cross-section” (Claim 37) are unknown.
6. Claim 56 is indefinite because the meaning of the phrase “free from any rack” is unknown.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 28, 32, 33, 35-49, 54, 55, and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leva (U.S. Pat. No. 3,933,953) in view of McNulty et al (U.S. Pat. No.

5,645,953) in further view of Chuang (U.S. Pat. No. 5,387,377) and in further view of Hardwick (Handbook of Brewing, pp. 294-99) for the reason set forth in the last Office Action.

9. Applicant has added new claims with limitations directed to the size of the filler bodies, the absence of significant foam formation, flow rate of inert gas and increasing the surface area of contact between gas and wort. The limitation directed to the filler bodies, it would have been obvious to those of ordinary skill in the art to modify the size of the filler bodies as this characteristic is a result effective variable that is typically optimized by those in the art. The remaining new claim limitations are considered to be inherent with or directed to the intended use of the claimed apparatus and are therefore met by the prior art disclosure.

10. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leva (U.S. Pat. No. 3,933,953) in view of McNulty et al (U.S. Pat. No. 5,645,953) in further view of Chuang (U.S. Pat. No. 5,387,377) and in further view of Hardwick (Handbook of Brewing, pp. 294-99) and in further view of Lee et al (U.S. Pat. No. 5,106,544).

11. The cited art teaches that cited above but do not disclose a distribution means comprised of secondary pipes with orifices. While this limitation is considered to be notoriously well known in the contact arts, Lee et al teaches that the prior art relies on a distributor that can be seen to comprise a main pipe and secondary pipe that inherently have orifices for distributing liquid. It would have been obvious to those of ordinary skill in the art to use the distribution means of Lee

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et al in the process means as disclosed by the cited art above as it is a well known distribution means.

12. Claims 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admissions in view of Kruger et al (U.S. Pat. No. 4,550,029) in further view of Leva in view of McNulty et al in further view of Chuang and in further view of Hardwick.

13. Applicant admits the well known processing of beer wort to remove unwanted volatile flavors. Applicant does not disclose the specifically claimed apparatus is old.

14. Leva in view of McNulty et al in further view of Chuang and in further view of Hardwick teach that cited above but do not teach the use of apparatus for treating beer wort. Kruger teaches treating beer wort with steam or an inert gas in a counter-flow gas/liquid contacting column (col. 1, line 63 to col. 3, line 12). Kruger et al teach the injection of steam/inert gas into a wort "to degas and free the wort from undesirable foreign substances" (Abstract) and additionally saves energy. (Col. 1, line 56 to col. 2, line 19). An apparatus is associated with said boiling (Fig. 1) whereby the wort is sprayed in at the top while the steam/inert gas is injected into the bottom.

15. It would have been obvious to those of ordinary skill in the art to perform the prior art process of the admitted prior art or Kruger et al in apparatus as taught by Leva in view of McNulty et al in further view of Chuang and in further view of Hardwick because said means are commonly used for separation processes such as that taught by the prior art.

16. While not specifically mentioned, the internal pressure of the column is inherently controlled by the pressure to some extent. The claims do not specifically claim how the pressure is controlled or responds to a temperature increase or decrease but merely that it is controlled, i.e., responds to a temperature change.

*Response to Arguments*

17. Applicant's arguments filed 04/06/00 have been fully considered but they are not persuasive.

18. Applicant argues that the claim recitation directed to using the apparatus for beer wort must be given patentable weight. As previously stated, the use of the apparatus for wort is merely an intended use and therefore it is not given any patentable weight.

19. Applicant also argues that the Examiner has provided no motivation to combine the teachings of the cited art. All the claimed limitations are considered to be taught explicitly or inherently in the cited references and as previously stated, it would have been obvious to those of ordinary skill in the art to manufacture a gas/liquid contacting apparatus that incorporates the various means disclosed by the cited prior art above as they are all well known means for performing gas/liquid contacting processes. Applicant is combining notoriously well known means in the fluid processing art to assemble an apparatus that can be used to treat beer wort. Applicant admits on the record that stripping unwanted volatile components from wort is

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notoriously well known (see pages 1-2 of instant specification). And because Applicant has not submitted any evidence of unexpected results the rejection is maintained.

20. Applicant also argues that limitations found in the dependent claims are not found or suggested in the cited art. Specifically, Applicant refers to providing chimneys as found in Claim 22 (which is canceled). Applicant's attention is directed to Fig. 1 of Leva where there are readily shown the chimneys as claimed. Specifically, Applicant states that there is not disclosure of the rings as claimed in Claim 23 (which is canceled). Applicant's attention is directed to Chuang, who discusses using rings and readily shows in his Figures that they are stacked as to broadly create a diffuse array. Specifically, Applicant asserts that there is no showing of a bottom plate with corrugations. Applicant's attention is directed to McNulty et al who broadly disclose corrugation in their figures. Specifically, Applicant argues that there is no showing of main and secondary pipes with orifices as claimed in Claims 37 and now 53. First, it is noted that Claim 37 has no language directed to secondary pipes. Nevertheless, Applicant's attention is directed to Chuang et al who shows main pipes containing multiple orifices. Lastly, specifically, Applicant argues that there is no showing of an inclined surface and baffle as claimed in Claim 40. McNulty et al clearly show this feature (see Fig. 2).

21. Applicant argues that the cited art does not present a *prima facie* case of evidence with regard to the process claims. Applicant's arguments with respect to claims 51 and 52 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

22. No claim is allowed.
23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

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25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The **fax phone number** for this Group is (703)-305-3602.

26. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer

June 16, 2000